IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE M.H.S. ANSARI**

**AND**
**THE HON'BLE MR JUSTICE T.CH.SURYA RAO**

**WRIT PETITION NO : 254 of 2005**

Between:

Sri Laxmi Steel Re-rolling Mills Pvt.,Ltd rep by its Director,Mr.Subhash 69-70,Bandlaguda,Hyderabad. R/o.Mareddpally,Secunderabad.

**..... PETITIONER**

AND

1 The Joint Commissioner of Central Excise, Commissionerate- IV, Hyderabad.

2 The Commissioner of Customs & Excise Appeals-II
L.B.Stadium Road,Basheerbagh, Hyderabad 500 004.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of mandamus directing the second Respondent to modify the order of stay granted by him on 26-10-2004 and hear the appeal of the petitioner on merits without insisting upon payment of disputed duty.

**Counsel for the Petitioner: MR.S.RAVI**

**Counsel for the Respondents: MR.A.RAJASHEKAR REDDY, SR.CENTRAL GOVERNMENT STANDING COUNSEL.**

**The Court made the following:**

**ORDER**: (Per Hon'ble Sri Justice T.Ch.Surya Rao)

By an order dated 26.10.2004, stay was granted pending disposal of the appeal by the Commissioner of Customs and Excise, Appeals-II.

On the premise that the petitioner's unit was closed down with effect from 01.04.1998, there could be no valid demand for the period between 01.04.1998 to 31.08.1998 and therefore the stay granted in favour of the petitioner on 26.10.2004 requires to be modified, is the grievance of the petitioner.

There has been no gainsaying that even today, the petitioner's unit remains closed. Considering the fact that the unit remained closed with effect from 31.08.1998 onwards, a demand was raised for a sum of Rs.3,93,447/- for the period preceding the said date. It is the contention of the petitioner that the unit was closed down with effect from 01.04.1998. In fact electricity connection to the unit was disconnected from 29.08.1998. It is the representation of the petitioner that the fact that the unit was closed down with effect from 01.04.1998, was duly informed to the authorities by a letter dated 26.03.1998 which was received by the department under an office stamp on the same date. This part of the case of the petitioner was denied by the respondent emphatically asserting that no such intimation was received in fact in the office. In support of the said denial he placed reliance on the intimation letter. In view of the assertion and denial on either side whether the stoppage intimation was issued and received by the department as alleged on 01.04.1998 becomes a contentious issue. In fact, only on that premise the petitioner seeks modification of the stay order.

In this writ petition, we are afraid that we cannot go legitimately, into the question as to whether the unit was closed on 01.04.1998 or it remained closed with effect from 31.08.1998 onwards. Since that is the very basis upon which the petitioner seeks modification of the stay order, that request cannot be acceded to. Having regard to the fact that the unit was closed down regardless of the fact that whether it was with effect from 01.04.1998 or 31.08.1998, the petitioner squarely pleads that it was passing through severe financial problems on account of the closure of the unit from 01.04.1998 onwards, indirectly thereby pleading hardship. We see considerable force in the said plea. Therefore on equitable consideration, we are of the considered view that it is expedient in the interest of justice to direct the petitioner to deposit a sum while dispensing with the pre-deposit as is required under Section 35(f) of the Central Excise Act and indeed pre-deposit was dispensed with while entertaining the appeal directing the petitioner to deposit a sum of Rs.2,00,000/- out of the demanded amount of Rs.3,93,447/-. In that view of the matter the interest of justice would be sub-served by directing the petitioner

to deposit an amount of Rs.1,00,000/- on or before 31st March, 2005 while dispensing with the pre-deposit of the total demanded duty. The said order passed by the 2nd respondent stands modified to that extent and consequently the writ petition stands allowed accordingly.

_____ (M.H.S.ANSARI,J)

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(T.CH.SURYARAO,J)

16.03.2005

**MRKR**

To

1 The Joint Commissioner of Central Excise, Commissionerate- IV,

2 The Commissioner of Customs&Excise Appeals-II
L.B.Stadium Road,Basheerbagh, Hyderabad 500 004.

3 Two CD copies

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